IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 822 OF 2006
IN
CRIMINAL APPEAL NO. OF 2006

Vithal Poojary ....Applicant.

V/s

Durgaprasad N. Shetty & Anr. ....Respondents.

Mr. R.D. Suryawanshi for the applicant.

Mr. M.M. Thorat for Respondent No.1.

Mr. Y.M. Nakhwa, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 3rd October, 2007.

P.C.:

1. Heard Shri Suryawanshi, the learned Counsel appearing on behalf of the applicant.

2. Applicant is challenging the order passed by the Trial Court whereby the respondent - accused was acquitted of the offence punishable under section 138 of the Negotiable Instruments Act.

3. It is the case of the applicant - complainant that he had given financial assistance to the accused and that in respect of the repayment of the said amount the said cheque which was given was

dishonoured. In his cross-examination, the complainant gave a different version regarding the reason why the said amount was being paid by the accused. In his cross-examination, the complainant has stated that he had given his hotel to Respondent no.1 for conducting and that the accused had incurred expenses for repairs and renovation. He has stated that an amount of Rs 5,81,440/- was outstanding and towards the said amount the cheque was given. The Trial Court has held that the accused has rebutted the presumption which is raised under section 139. In view of the contradictory stand taken by the complainant in his examination-in-chief and in cross-examination, the Trial Court held that the complainant had not proved that the cheuqe was given for existing debt or liability.

4. I have perused the evidence on record and also the impugned order. In my view, there is no infirmity in the order passed by the Trial Court. There is, obviously, a contradictory stand taken by the applicant, which has been brought on record. While rebutting the presumption which is raised under section 139 of the Negotiable Instruments Act, it is not necessary that the accused should lead evidence, particularly when the complainant in his cross-examination has taken a contradictory stand in respect of the reason why the cheque was given. Hence, no case is made out for grant of leave to file appeal. Application for leave to file appeal is dismissed. Appeal does not survive.

(V.M. KANADE, J.)